

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Schiavo	Team: Team # 4	CCRB Case #: 201404783	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/10/2014 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 7/10/2015	EO SOL 7/10/2015	
Date/Time CV Reported Fri, 05/16/2014 9:45 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 05/16/2014 9:45 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT William Cusack	00000	915539	070 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marco Chavez	22689	938215	070 PCT
2. POF Rosalie Joseph	10528	948056	070 PCT
3. POM Asghar Mahmood	10657	942101	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT William Cusack	Abuse: Lt. William Cusack authorized the entry of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)
C.LT William Cusack	Abuse: Lt. William Cusack threatened to arrest § 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On January 10, 2014, at approximately 6:00 p.m., § 87(2)(b) and his brother § 87(2)(b) got stuck in an elevator in § 87(2)(b)'s building, located at § 87(2)(b). Firefighters responded, and § 87(2)(b) and § 87(2)(b) argued with them over the length of time it took to extricate them from the elevator. After they were freed, there was no further interaction. Approximately two hours later, Lt. William Cusack, PO Marco Chavez, PO Asghar Mahmood, and PO Rosalie Joseph of the 70th Precinct responded to the apartment where § 87(2)(b) and § 87(2)(b) were with § 87(2)(b)'s girlfriend § 87(2)(b) and § 87(2)(b) and § 87(2)(b)'s § 87(2)(b)-old daughter.

§ 87(2)(b) and § 87(2)(b) went out to the hallway. § 87(2)(b) was immediately handcuffed. Lt. Cusack asked § 87(2)(b) who else was in the apartment and said that the officers needed to get inside the apartment. § 87(2)(b) stated that she would not allow the officers to enter her apartment without a warrant. § 87(2)(b) went back into the apartment to retrieve shoes for § 87(2)(b). As she opened the apartment door, PO Mahmood pushed the door open and entered with Lt. Cusack and PO Chavez (**Allegation A**).

The officers spotted § 87(2)(b) in a bedroom and asked him to come out to the living room. § 87(2)(b) alleged that as he came outside, one of the officers (he could not recall which) tackled him to the ground (**Allegation B**). § 87(2)(b) was handcuffed in the building's hallway and the officers escorted him downstairs. § 87(2)(b) followed them downstairs and asked Lt. Cusack why § 87(2)(b) was being arrested. Lt. Cusack told § 87(2)(b) not to speak to him otherwise he would arrest her because she resisted allowing the officers into her apartment (**Allegation C**). § 87(2)(b) then returned upstairs to her apartment. § 87(2)(b) and § 87(2)(b) were both arrested and charged with § 87(2)(a) 160.50, § 87(2)(b) § 87(4-b) § 87(2)(g).

Civilian Criminal Histories

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is the first complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 8-9). Lt. Cusack was listed as a subject officer in one other CCRB complaint, 200302445, which was closed as complainant uncooperative (encl. 7).

Findings and Recommendations

Allegation not pleaded

- § 87(2)(b) alleged that PO Chavez spoke discourteously to § 87(2)(b). However, § 87(2)(b) did not make this allegation. § 87(2)(g)

Allegation A – Abuse of Authority: Lt. William Cusack authorized the entry of § 87(2)(b) in Brooklyn.

In § 87(2)(b)'s letter to the CCRB, which was notarized on April 26, 2014 (encl. 12-14), in his official statement on May 20, 2014 (encl. 15-18), and in § 87(2)(b) in-person

statement on May 16, 2014 (encl. 19-24), it was alleged that the officers entered the apartment despite § 87(2)(b) request that they not enter. § 87(2)(b) who only provided a phone statement on July 25, 2014, stated that the officers entered the apartment without asking permission from § 87(2)(b) (encl. 25). § 87(2)(g)

None of the officers denied entering the apartment, but none of them remembered definitively all the officers who entered. § 87(2)(g)

According to People v. McBride (encl. 1-5), a warrantless entry by police is justified if factors surrounding the entry include the gravity of the offense with which the suspect is to be charged, whether the suspect is reasonably believed to be armed, a clear showing of probable cause to believe that the suspect committed the crime, a strong reason to believe that the suspect is in the premises being entered, the peaceful circumstances of the entry, and the likelihood that the suspect will escape. People v. McBride, 14 N.Y.3D 440, 2010 N.Y.

All the officers testified—PO Joseph on August 19, 2014 (encl. 30-31), Lt. Cusack (encl. 39-40) and PO Chavez (encl. 35-36) on September 23, 2014, and PO Mahmood on October 23, 2014 (encl. 44-45)—that FDNY firefighters reported to them that § 87(2)(b) had menaced them with a knife during the argument that took place as the firefighters extricated him and § 87(2)(b) from the elevator. This was corroborated by the audio recording of the 911 call made by an FDNY dispatcher to report that firefighters had been assaulted by a civilian (encl. 80). Additionally, the firefighters led the officers directly to the apartment that § 87(2)(b) and § 87(2)(b) had entered after the dispute. § 87(2)(g)

PO Mahmood testified that when the officers asked where § 87(2)(b) was, § 87(2)(b) denied that he was there, but granted the officers permission to enter and check to verify that he was not there. Lt. Cusack stated that § 87(2)(b) came into the officers' view at some point, at which time he was placed under arrest, but could not remember if officers entered the apartment. According to PO Chavez, § 87(2)(b) stated that § 87(2)(b) was inside the apartment and invited the officers in as well. PO Joseph testified that PO Mahmood asked § 87(2)(b) if the officers could enter the apartment, and § 87(2)(b) allowed them to do so. All of the officers stated that the firefighters positively identified § 87(2)(b) as one of the males from the earlier dispute.

§ 87(2)(b) testified that she verbally told the officers she did not want them to enter the apartment, but did not attempt to physically prevent them from doing so when they followed her in from the hallway. § 87(2)(g)

§ 87(2)(g)

Allegation B – Force: An officer used physical force against § 87(2)(b)

In § 87(2)(b)'s letter to the CCRB, he alleged that after he walked out of his bedroom into the living room of his apartment, two officers tackled him to the floor. In § 87(2)(b)'s official statement, he alleged that an officer (he could not recall which) tackled him to the floor.

§ 87(2)(g)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED].

According to Patrol Guide Procedure 203-11 (encl. 6a), officers at the scene of a police incident must use the minimum necessary force at all times.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Abuse of Authority: Lt. William Cusack threatened to arrest § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] alleged that as the officers escorted § 87(2)(b) [REDACTED] down to the street, Lt. Cusack told her not to speak to him or he would arrest her. § 87(2)(b) [REDACTED] did not mention anything about this part of the interaction during his statement. Lt. Cusack denied threatening to arrest § 87(2)(b) [REDACTED] and the other officers did not hear Lt. Cusack make such a threat. § 87(2)(g) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(g), § 87(4-b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date